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Supreme Court of the United States

October Term, 1941

No. 360

AMERICAN INSURANCE CO., *Appellant,*

v.

RAY B. LUCAS, Superintendent of Insurance, and ROY MCKITTRICK, Attorney General, *Appellees.*

Appeal from the District Court of the United States (Statutory Three-Judge Court) for the Western District of Missouri.

BRIEF SUPPORTING JURISDICTIONAL STATEMENT

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Statement of the Case

On December 30, 1929, 139 Fire Insurance Companies (hereafter called the Companies) increased their Missouri rates 16⅔% (R. 10, 89-91*).

On May 28, 1930, the Superintendent of Insurance of Missouri (by an order entered under the authority of the Statutes of Missouri) found that the old rates were already adequate, and *denied* the 16⅔% increase (R. 11, 37).

On May 28, 1930, the Companies filed in the Federal Court 137 Bills in Equity (as amended June 16), against the Superintendent of Insurance and the Attorney General of Missouri,

* All references are to Vol. A of the "Transcript of Record".

I. To enjoin the enforcement of the Superintendent's statutory Rate Order denying the increase; and

II. To enjoin the State Officials from interfering with the Companies' collection of the 16⅔% rate increase, upon the ground that, under the 14th Amendment,

(1) The old rates were *confiscatory;*

(2) The statutory Rate Order would *confiscate* the Companies' property;

(3) The enforcement of the statutory Rate Order, and the severe penalties for its violation, would deprive the Companies of their Federal Constitutional rights; and

(4) The Statutes of Missouri (under which such threatened action was about to be taken) were unconstitutional and void, because in violation of the Constitution of the United States (R. 10, 11, 26, 83-88).

On July 2, 1930 a statutory three-Judge Court granted an Interlocutory Injunction in each case, by which the Superintendent of Insurance and the Attorney General were,

(*a*) Enjoined and restrained from interfering with the Companies' collection of the 16⅔% rate increase;

(*b*) Enjoined and restrained from enforcing the penalties under the Statutes of Missouri; and

(*c*) "Enjoined and restrained from in anywise enforcing or taking any steps to enforce the order of disapproval or denial of increase" made by the Superintendent of Insurance on May 28, 1930, "until the final hearing and decree of this Court"

—all conditioned upon the Companies' paying into Court, as "impoundings", all of the 16⅔% increased rates as collected by them (R. 19-25).

Under that protective injunction, the Companies *collected* and *paid into Court* the 16⅔% rate increases, amounting to $9,893,321.08 (R. 12).

On May 21, 1935, pursuant to an agreement to settle the prolonged controversy, the Superintendent of Insurance entered a new statutory Rate Order (*i*) approving 80% of the disputed increase, and (*ii*) disapproving 20% of the increase (R. 172).

On February 1, 1936 (pursuant to Stipulation of the parties R. 171-178, 212), the three-Judge Court entered Consent Decrees by which it "Ordered, Adjudged and Decreed" that,

(1) "The controversy herein having been settled and disposed of between the parties and no controversies between the parties herein remaining, this case is hereby dismissed" (R. 212);

(2) That the $9,893,321.08 impounded funds should be distributed 20% to the policyholders and 80% to the Companies—thereby automatically conforming to the Superintendent's Rate Order of May 21 1935 (R. 212, 215);

(3) The Court expressly reserved jurisdiction to effectuate the purposes of the Consent Decrees (R. 218-219).

The $9,893,321.08[1] impounded funds were distributed accordingly.

* * * * *

On May 29, 1939,[2] a successor Superintendent of Insurance (Mr. Lucas) made a motion before the three-Judge

[1] Except $941,240.52 of impoundings, interest and accretions thereon.

[2] Arising from the indictment and plea of "Guilty" on account of income tax evasion by T. J. Pendergast and Superintendent of Insurance O'Malley; and from O'Malley receiving money from Pendergast in connection with the May 21, 1935, Rate Order and the Consent Decree of February 1, 1936.

Court for a citation to modify the 1936 Consent Decree, so as

(1) To adjudge that the former Superintendent's statutory Rate Order of May 21, 1935, *was invalid;*

(2) To require the Companies forthwith *to return* $7,190,982.99 "impoundings" to the Court;

(3) To distribute all "impoundings" to the policyholders at the Companies' expense; and

(4) "Not now [to] permit the re-opening" for "judicial determination" of the merits of the controversy, or of any question as to the legality of the old rates, or of the proposed new rates, or of the constitutionality of the Statutes of Missouri under which the Superintendent denied the 16⅔% rate increase (R. 220, 224, 225, 228).

Such proceedings were had before the three-Judge Court that the Companies promptly restored their 80% impoundings ($7,190,982.99) to the Court's Custodian (R. 250-251; Vol. IV, p. 120).

The Companies' restoration was coupled with their repeated insistence that the three-Judge Court should decide the rate controversy upon its merits, to-wit: upon the pleadings, the testimony taken in 1930-1935, and the Master in Chancery's Reports in the 137 cases—upon the ground that to distribute the restored "impoundings" to the policyholders [without any decision on the merits as to (*a*) the confiscatory nature of the old rates, and (*b*) the Companies' right to the proposed increased rates] would deprive them of their property in violation of the Fourteenth Amendment (R. 253, 256, 334, 352, 354-356, 357 note, 395, 396, 412, 444).

On August 14, 1940, the three-Judge Court entered the Final Decree now appealed from, by which it "set aside

and modified" the 1936 Consent Decree "insofar, and only insofar" as it had distributed 80% of the impounded funds to the Companies; and, without deciding the merits of the rate litigation, it directed such funds to be distributed to the policyholders at the expense of the Companies (R. 412).

The Companies have appealed from that Final Decree to this Court (R. 489-491), with Statement as to Jurisdiction (R. 506-517), contending that the Final Decree (1) denied the Companies' repeated requests for a trial of the rate cases on their merits, and (2) denied both an Interlocutory Injunction, *pendente lite*, as well as a Permanent Injunction upon the entry of such Final Decree, and that a direct appeal lay to this Court (Judicial Code § 266 as amended February 13, 1925).

I. This Court has jurisdiction of this appeal from the three-Judge Court's Final Decree.

On May 29, 1939, [three years after the Consent Decree, and long after it had presumably lost control over such Decree] the three-Judge Court (1) set aside so much of the Consent Decree as had distributed about $7,000,000 to the Companies, and (2) compelled the Companies to restore that huge amount to the Court's custody.

If the three-Judge Court possessed such power, then its exercise thereof must, of necessity, have automatically restored the dismissed causes to the Court's docket, with their pleadings, prayers for injunctive relief and Interlocutory Injunctions, which was the basis upon which the three-Judge Court could determine its further actions.

In short, the three-Judge Court's action—whether rightly or wrongly—in emasculating the Consent Decree, necessarily brought to life the pleadings, prayers for injunctive relief and testimony heard upon final submission; because, without that background, the Court would have

been perfectly blind as to everything concerning the $7,000,000 in its possession. When the Court once undertook to treat the Rate Litigation as sufficiently alive to enable it to exercise a $7,000,000 power thereunder, it necessarily placed the whole litigation in its hands for disposition, in one way or another.

When the three-Judge Court exercised its judicial power to seize $7,000,000, it could not blindly forget the very litigation by which the $7,000,000 came into its control. It could not, at will, take $7,000,000 from certain Companies and arbitrarily dispose of that, except in live law suits. Otherwise, the Court might have given the $7,000,000 to the Red Cross, to British Relief, or to reduce the National Debt. The reason the Court could not make any such arbitrary disposition of the $7,000,000 was that the only way it obtained control of the money, was under the pleadings, testimony, etc., in a litigation which it had assumed to revive.

By such revival—under which alone it could exercise the power to seize $7,000,000 and then dispose of it—it left the pleadings in force, with the prayers for injunctive relief.

On August 14, 1940, by a Final Decree, the three-Judge Court ordered the $7,000,000 (which it had seized back from the Companies) to be distributed to certain policyholders. Its only basis for so doing would be the existence of the litigation under which the money came into the hands of the Court, in the first instance. Therefore, when the 1940 Final Decree gave the $7,000,000 to the policyholders, that was a final disposition of the Rate litigation in which the Court secured jurisdiction over the $7,000,000.

That Rate litigation contained the usual legal attack upon the unconstitutional character of the Missouri Statutes and the Rate Order, and prayed for, and obtained, an Interlocutory Injunction. The 1940 Final Decree *denied* (in the language of Judicial Code § 266) a *permanent injunction*, just as certainly, and as effectively, as if it had adjudged in so many words (*a*) that the Companies' prayers for

injunctions were denied, and (*b*) that the impounded funds be returned to the policyholders.

In any injunction suit, a Final Decree may be in either of two forms: "Prayer for injunction denied and bill dismissed" or simply "Bill dismissed". The mere language in which such decree is couched cannot determine whether or not an appeal lies to the Supreme Court. It is the *effect* of the decree, not the language, which determines the jurisdictional right of appeal.

Otherwise in any of the kinds of suits with which Judicial Code § 266 deals, the three-Judge Court could always (when it decided for the defendant) prevent the plaintiff from appealing to the Supreme Court of the United States by merely omitting any reference to the prayer for injunction, and simply saying "Bill dismissed; judgment of dismissal accordingly". That is certainly not the law.

Likewise, it could prevent the defendant from appealing direct to the Supreme Court by the simple expedient of decreeing that impounded funds shall be delivered to the plaintiff, and without saying anything specifically about granting the plaintiff an injunction.

In the cases at bar, the three-Judge Court treated them as resuscitated and in existence, so as to enable it to recover into its own hands $7,000,000, and then to dispose of the $7,000,000 in a way that it thought proper; and yet Superintendent Lucas contends (1) that the litigation was dead; and (2) that the Court's action was not the equivalent of denying the Companies the injunction which they sought.

This Court must decide whether the right to a direct appeal under Judicial Code § 266 depends upon the use of the mere *verbal phrase* in a Final Decree that an injunction is denied, or whether it depends upon the *substantive effect* of a Final Decree.

II. The three-Judge Court denied a permanent injunction.

In connection with the three-Judge Court's action in reopening the Consent Decree, and compelling the Companies to return $7,000,000 (which they promptly did), the Companies repeatedly insisted that, as the three-Judge Court had breathed life into the cases to enable it to dispose of $7,000,000, the cases were also alive with their prayers for injunctive relief so as to require the three-Judge Court to pass upon the confiscatory nature of the rates, and either grant, or deny, the injunction against the State Officials' enforcement of the unconstitutional Missouri Statute and administrative legislative Order.

When the three-Judge Court, by its Final Decree, modified the Consent Decree only so far as to enable it to dispose of the impounded money, by returning it to the policyholders, it, *ipso facto,* (1) refused to hear and decide the cases on their merits, and (2) denied the Companies the injunction which they sought in the litigation. This, then, gave them the right to a direct appeal to this Court, under Judicial Code § 266.

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October 1, 1941.